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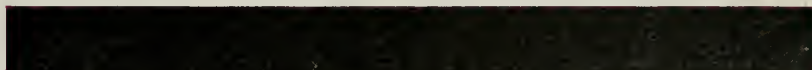
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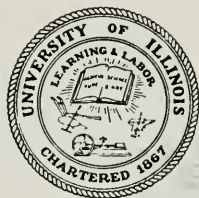
B U L L E T I N

Municipal Mediation Plans

UNIVERSITY OF ILLINOIS BULLETIN



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THE INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS has as a major responsibility "to inquire faithfully, honestly, and impartially into labor-management problems of all types, and secure facts which will lay the foundations for future progress in the whole field of labor relations." *Report of Board of Trustees, March 9, 1946, page 1031.*

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MUNICIPAL MEDIATION PLANS

Recent interest in mediation of labor disputes has been shown at all levels of government — federal, state, and municipal. This interest was given additional impetus when the War Labor Board was dissolved at the close of the war and at the same time the number and severity of labor disputes was increasing.

In addition to its regular functions, the U. S. Conciliation Service had shown signs of interest in local and area plans for settling labor disputes. A report issued by the American Municipal Association in May, 1947, describes one of these local plans as follows:

Possibility of future widespread establishment under Federal auspices of industrial relations groups similar to the labor-management committees provided for by the 'Toledo Plan' is indicated by the creation in late December, 1946, of a 'Labor-Management Assembly' in Philadelphia under the sponsorship of the U. S. Department of Labor. Composed of 22 representatives of labor, management, and the public, this 'assembly' was set up under the supervision of the director of the U. S. Conciliation Service, an arm of the Labor Department, and assigned the following functions:

- (1) To review the work of the U. S. Conciliation Service's Philadelphia branch office, checking especially the effectiveness of its mediation efforts and the impartiality of its conciliations;
- (2) To assist in the mediation of disputes which threaten to disrupt the industry or the economy of the area; and
- (3) To refer such disputes to a 'peace panel,' a subcommittee of the "assembly," having an equal number of labor and management representatives, with the panel attempting to settle the differences but without making any findings or public recommendations.

The extension of conciliation services along regional lines is now in the hands of the newly created Federal Mediation and Conciliation Service. This agency was set up by the Labor Management Relations Act, 1947, to replace the U. S. Conciliation Service and is independent of the Department of Labor.

Among the states, New York, Massachusetts, New Jersey, Michigan, and Illinois, have functioning mediation and conciliation services.

Interest in municipal mediation has been translated into action and working plans in only a few cases, including Toledo, Louisville, Boston, and New York, among others. The usual practice in cities where such plans do not exist is for the Mayor to take action only when the "labor situation" so obviously threatens the public interest

as to create serious difficulty in the community. This has been described as crisis action and does nothing in the way of removing the causes of labor disputes.

This Bulletin is limited to the consideration of two questions: First, what general and specific operational problems are encountered by any municipal mediation agency? Second, under what conditions should this type of mediation facility be extended to other cities, and with what modifications? Since analysis must wait upon description, some idea of the workings of these plans will be given before proceeding to analyze their difficulties.

Toledo Agencies Past and Present

Any discussion of municipal labor plans must begin with Toledo, the trail blazer in municipal mediation.

A series of disastrous strikes, threatening to disrupt the industrial life of the community, resulted in the original Toledo Industrial Peace Board. The Board was inaugurated in 1935 with the aid of Edward F. McGrady, then Assistant U. S. Secretary of Labor. The Board as it was finally constituted was made up of 18 members — five management, five labor, and eight public representatives. The key to the successful operation of the Board was its director, Edmund Ruffin, a former newspaper reporter, who maintained direct and vital contact with the parties involved in any controversy. He called upon Board members only in those cases proving impossible of direct and immediate settlement by him and was largely responsible for the success of the Board. There was no established procedure and no compulsion to use the Board or to abide by its suggestions. The only pressure was that exercised by the local newspapers, which consistently emphasized the public interest in the peaceful settlement of disputes.

Board Policies. The policies of the Board drawn up by McGrady to insure its successful operation were quoted in the *Toledo City Journal* of January 22, 1938 as follows:

1. The Board will never at any time have authority to order anyone to do anything.
2. Co-operation between labor, management and the Board will be entirely voluntary.

3. Members of the Board will represent the community at large rather than any faction or group.

4. The Board shall merely mediate, which is to say make recommendations or suggestions, which may be mutually approved or rejected.

5. The Board shall never arbitrate, which is to say it shall not, even by mutual request, make "binding" or "final" decisions which both sides must accept. These might lead to loss of confidence in the Board no matter how fair the decisions.

6. The Board will never take a vote on the rightness or wrongness of the issues in a dispute. No judge or jury attitude will ever be displayed.

7. The Board will operate with an irreducible minimum of publicity.

8. The Board will not interfere with or assist in union organization campaigns.

9. The Board will take no positions on such questions as "open shop" or "closed shop."

Although operating on a small scale, the Board handled successfully over 100 major and minor disputes. The substantial reduction in the amount of labor conflict in Toledo won national fame and gradually other cities facing the same problems took notice of it, sent observers, and adopted similar plans.

During the war the functions of the Toledo Industrial Peace Board were gradually assumed by the National War Labor Board and other wartime government agencies. As a result, the Board was disbanded in 1943.

In 1945 as the war's end seemed imminent, it was decided to appoint a committee to study labor-management relations in Toledo. If conditions warranted, machinery was to be set up to prevent and settle future labor conflict.

Postwar Committee. After many meetings and discussions, the committee drew up an Industrial Relations Charter enumerating the principles upon which operation of any mediation group would be based. The principles enumerated in the charter included the following:

1. That management and labor each recognize and respect the prerogatives and responsibilities of the other.

2. That there be made available for voluntary utilization, mediation, fact-finding and arbitration facilities.

3. That an educational program to promote better understanding between management and labor be undertaken.

This Charter contained also the structural framework of a proposed Labor-Management-Citizens Committee and was adopted by the planning committee in November of 1945. In February, 1946, a city ordinance was passed establishing a permanent LMC Committee and incorporating the Charter into law. By June of that year a permanent office was opened and a full-time Executive Secretary appointed. The members of the original investigating committee were appointed to the permanent LMC Committee.

The LMC is made up of 18 members receiving no salary for their work — six each from labor, management and the public — appointed by the Mayor for one year. The purpose of this Committee, as stated in its enabling ordinance, is that it should act as “. . . the directing body for the purpose of implementing and effectuating the purposes and principle of the Charter . . .”

Dispute Procedure. When a dispute arises or threatens and the services of the LMC are desired, the case is first referred to the office of the Executive Secretary. The Secretary may attempt to settle the matter personally, but if the dispute is too serious or too complex to be settled at this level and mediation by the panel is desired, preliminary interviews are held with the parties concerned. The Secretary then draws up a statement of the issues involved in the dispute, including the position taken by each party, and submits it to a tri-partite panel selected by the Chairman to mediate the case.

If the panel is unsuccessful in settling the dispute, it may refer the dispute to the full committee. The LMC may, at its discretion, choose to sit in on the case, but ordinarily will do so only in disputes proving considerably detrimental to the public welfare or hopeless of settlement elsewhere.

In addition to its mediation work, the LMC has done some arbitration. As of April, 1947, four cases had been handled. This activity is in distinct opposition to the policies of the former Toledo Peace Board and to those principles generally accepted by authorities on mediation. To cope with the problem of arbitration, it was decided in February, 1947, to draw up a list of arbitrators for those desiring this service. In addition to this, having found that the full 18-man committee could not effectively handle arbitration cases, the Committee provided that arbitration proceedings be handled by

panels or by single arbitrators. As a result, either the public members of the LMC serve as arbitrators or the Committee arranges for other competent men to serve, as individuals or as panels of three.

First Year Record. By the end of its first year of full operation, July 1, 1947, the Committee had handled 78 local labor disputes. Twenty-two of these were strikes, of which the Committee settled 14 and gave minor assistance in eight. The Committee helped avert work stoppages in 39 other disputes which had reached the strike stage.

In the first half of 1947, man-days lost from local strikes approximated 13,500, as opposed to 56,060 man-days lost in the first six months of 1946. The decline was approximately the same as for the country as a whole.

During the period from October, 1946 to March, 1947, there were no strikes. This halcyon period was brought to an end in the latter month with the eruption of three strikes, only one of which, as a local dispute, could be handled by the LMC. It was settled in four and one-half days.

Boston's Industrial Relations Council

In 1941, a number of important business and labor leaders set up the Industrial Relations Council of Metropolitan Boston.* Their purpose, as stated in a pamphlet, "The Boston Story," issued by the Council on October 1, 1946, was to promote "better understanding and the solution of labor problems through continuous and closer personal contact and acquaintance among the representatives of these two groups." The Council is basically bi-partisan in character. Each of its major committees—Executive, Conciliation, and Advisory—includes an equal number of union and company representatives. The Executive Committee includes, in addition, one public member.

When disputes arise, participants may apply to the Council for help in settlement. Three Chairmen of the Conciliation Committee

* Another agency was created on March 5, 1947. This was intended to handle the grievances of employees of the city of Boston. This committee recently had its membership increased from six to nine, and now includes three officers from Boston's municipal staff, and three men each from the AFL and the CIO. Grievances are handled in all cases by the three city officers and by either the AFL or the CIO group, depending upon the union affiliation of the aggrieved individual.

(one for industry and two for labor, from the AFL and the CIO respectively) select a panel from among the members of the Executive Board or affiliated members of the Council. It is this panel which does the actual mediation. To minimize industrial disputes, the Council has now incorporated a contract-reminder service similar to that of New York City. Union and management Council members are encouraged to notify the Executive Director of their contract expiration dates.

Other Services. In addition to the usual mediation facilities, the Boston Council has suggested that its members make use of several other services. Where the mediator supplied by the Council has little success in settling the dispute, the Council will submit a new list to the parties so that they may choose a new conciliator. Furthermore, the Council is willing to draw up a list from which members may choose a General Chairman to supervise the negotiation of a new contract. This Chairman acts as a moderator, merely drawing up the basic rules of procedure, preparing the agenda, and guiding the discussion along logical channels. If negotiations bog down and the parties wish the Chairman to act as conciliator, he may do so. If the dispute is not settled by conciliatory methods, arbitration is suggested.

"The Boston Story" explains, "The conciliators and . . . the arbitrators supplied by the Industrial Relations Council are business and union officials who, individually, possess broad executive experience and who are pretty thoroughly acquainted with labor problems within the metropolitan area; men who jealously guard reputations for fairness."

In addition to the settling of disputes, the Council attempts to create and develop an atmosphere of understanding and co-operation between management and labor through informal meetings and discussions.

Boston-Toledo Comparison. The Industrial Relations Council of Boston differs from Toledo's LMC in two major respects. First, it is in no way connected with the local government but was originated and sponsored by independent local groups. Second, it is primarily bi-partite in contrast with the tri-partite set-up of the Toledo Committee. The plans are alike in that both offer arbitration as well as mediation services.

New York City Plan

The plan for municipal industrial peace found in New York differs quite sharply from those previously described.

On October 1, 1946, Mayor William O'Dwyer of New York established the City Labor Relations Division, consisting of a director, a deputy-director, and a counsel, plus a mediator, a secretary and three stenographers. According to the American Municipal Association report, previously mentioned:

While the Toledo and Louisville committees have indicated willingness to intervene in virtually all labor disputes that are strictly local in character, the New York plan contemplates such intervention only in disputes that vitally affect the public health, safety and welfare.

The Division, from a list of contract expiration dates, communicates with management and labor representatives a full month before contracts are to expire and urges that the parties begin negotiations immediately. If there is no progress within two weeks, the Division notifies the State Mediation Board or the regional offices of the U. S. Conciliation Service.

Point of Intervention. The Division itself does not intervene until it becomes obvious that there will be a breakdown of negotiations and possibly or probably a strike. When it does finally intervene, the American Municipal Association reports, ". . . a highly elastic approach is followed. In some cases one of the three leading members of the Division of Labor Relations, co-operating with a state mediator or a federal conciliator, assists in bringing about a settlement. In other disputes, a tri-partite committee of outstanding citizens, especially fitted to handle the specific case, is appointed by the Mayor, with each such committee being dissolved after a settlement has been reached." There is no permanent panel. Mediators are chosen as the need arises. If there is no hope of reaching agreement or of submitting the issues to arbitration, the Division may then ask a committee to make a report to the Mayor, who may, if he deems it advisable, make it public.

Division's Record. From the time of the Division's inception in October, 1946, to June 30, 1947, a total of 39 disputes had been handled. Twenty-three of these disputes were settled without resort to strike action while in 16 disputes, strikes were already in progress at the time the Division intervened.

Because many of the disputes handled have involved municipal employees, in March, 1947, the Division drew up a comprehensive plan of procedures for the settling of grievances and requests for changes in wages, hours and working conditions in the City departments.

Experience in Other Cities

Plans similar to those in operation in Toledo and Boston have been considered or adopted elsewhere in the United States. For example, the committee in Louisville, Kentucky, organized in July, 1946, is modeled almost completely after the Toledo committee. However, as was pointed out by the American Municipal Association report, there is an important difference with respect to the arbitration policies followed by the two committees. "The Louisville Committee, . . . undertakes to arbitrate only in the case of jurisdictional disputes and those involving governmental [municipal] agencies."

Mediation plans have been proposed but not adopted in Chicago and in St. Louis. More recently, Detroit (May, 1947) and Seattle (June, 1947) gave the Toledo plan extended consideration. Kansas City, Missouri; Los Angeles, California; Milwaukee, Wisconsin; New Orleans, Louisiana; and Rockford, Illinois are also considering plans based on that of Toledo.

The Labor Relations Board in Newark, New Jersey, modeled after the original Toledo Peace Board, was organized in April, 1937, but was disbanded soon after the establishment of the New Jersey State Board of Mediation on April 23, 1941. In addition, mediation facilities have existed at various times in Centralia, Washington; Sheboygan, Wisconsin, and Adrian, Michigan.

Problems of Organization and Operation

Despite the differences in organization patterns, most of these agencies face essentially the same problems.

With regard to form, it is not necessary that the agency follow any one plan. Assuming that an agency similar to that in Toledo or Boston is under consideration, some thought must be given to the desirability of a tri-partite as opposed to a bi-partite agency.

Personnel of Board. The inclusion of public members may serve to give greater prestige to the board and may serve to bring greater weight to bear upon the other two parties to reach amicable agreement. Further, it may be felt that management and labor alone on any panel will do little more than argue the merits of a case in a partisan manner, so that the public members will help to provide the needed measure of impartiality. In opposition it may be argued that sound labor-management relations can best be developed where public members are not involved in the mediation proceedings. The decision must rest upon the particular needs of the community.

Another major problem in the realm of personnel is that involving the caliber of the men chosen to sit on the panel. It is essential that these men be leaders in the community and in their respective fields if the agency is to command respect. Yet these men have many other responsibilities which keep them from devoting the necessary amount of time to this kind of work. The effect of this lack of time becomes increasingly apparent as the case load of the agency mounts. The result may well be that other groups of men, not as influential or well known, are needed to cope with the amount of work before the agency. The fact that the community leaders are less active in the committee may decrease the effectiveness of the agency.

Arbitration Policy. Confronting even the best-intentioned and the most intelligent members is the question: Shall the agency combine mediation with arbitration? The position taken by most students of labor relations may best be summarized by the following quotation from Kaltenborn's book, *Government Adjustment of Labor Disputes*:

Mediators should not serve either as arbitrators or as members of an 'emergency board.' This is of paramount importance. A mediator must not be forced to take a positive stand on the basic issues of industrial disputes and thereby run the risk of injuring his effectiveness as a mediator by alienating one of the parties. Where mediation and arbitration are combined within the same agency, the functions should be performed by different personnel. Even more desirable is an arrangement similar to that existing in New York [state] where arbitration cases are not handled by the mediation board or its staff but the parties are encouraged to select arbitrators from a large list of possible arbitrators chosen by the board.

The New York State Board of Mediation, at one time combined mediation with arbitration facilities. However, it soon found that

its effectiveness as a mediation agency was being hampered by its activities in the sphere of arbitration. Consequently it changed its policy to the one mentioned above. An awareness of the difficulties arising from this combination has been evidenced by the Toledo Committee in its recently changed attitude toward arbitration. The policy suggested by Mr. McGrady for the original Toledo Board seems to insure the most effective operation of such a board.

Geographical Considerations. Even where all the problems arising from organization and functioning are successfully settled, the effectiveness of any municipal mediation plan is severely limited by geographical considerations. At best such an agency can deal only with those disputes which are local in origin and in extent. Just as state mediation agencies must limit themselves to disputes originating within the state, so municipal agencies are similarly limited. This was demonstrated in March, 1947, when the Toledo Committee could intervene in only one of three current strikes. This is not to argue against municipal plans but rather to point up their limited scope.

Other problems arising to distress any such committee are not inherent in mediation plans as such. The agency, for example, may use its prestige to push extraneous plans calculated to benefit individuals or the public. Differences of opinion on these outside matters may be so severe as to hamper seriously the real work of the agency. Individuals may be tempted to use membership on the committee as a stepping stone to other positions. These problems are the sort that are faced by any agency in the public eye and can be dealt with only by the determined and sincere efforts of the committee members to realize the aims of the agency in the manner stipulated by its charter.

Problems of Jurisdiction

The idea of the "Toledo Plan" seems to have a great popular appeal for other cities. Articles have appeared in leading magazines and newspapers urging the wholesale adoption of this plan on a nation-wide scale. It may be well to examine the validity of urging such wholesale adoption.

Kaltenborn states that the desirability of municipal adjustment agencies "appears to depend upon (1) frequency of labor disputes (2) whether there is an effective state adjustment agency."

The first point is self-explanatory. Where there is little or no industrial conflict, there is obviously no need for such an agency. The second point may require a little elaboration. The key word here is "effective." Many states have made some provision for the conciliation of labor disputes, but where this provision is not activated by agencies of the state there may be a real need for municipal activity. Toledo is in a state having no such agency.

State-Municipal. Generally, where there is an efficient state mediation board, a municipal agency runs the risk of decreasing over-all efficiency by duplication and overlapping. When disputing parties realize that they have at their disposal two organizations whose jurisdictions and functions overlap, they are tempted to take neither seriously and to delay until they see where the best bargain can be obtained. In the attempt to avoid this situation, both the Newark, New Jersey, board and a previous New York City board were disbanded when effective state mediation boards were instituted.

Nevertheless, in some instances it may be found necessary and desirable to have both state and municipal agencies. For this reason, in situations where state labor disputes machinery is established, it would appear desirable to permit enough flexibility so that state and local agencies may operate side by side. In New York City the late Mayor LaGuardia and the present Mayor O'Dwyer found a need for both state and municipal agencies. The same is true of Boston. No hard and fast rule can be laid down, but the largest, most highly industrialized cities, would probably do well to examine the possibilities of establishing mediation facilities in addition to those provided by the state.

Where two agencies operate within the same territory, they must agree upon some mutually desirable jurisdictional and functional limitations. According to a report issued by Wayne University's Institute of Industrial Relations, a serious jurisdictional problem may develop between the state and municipalities in Michigan. Here legislation (Michigan State Act No. 157 of 1947)

has recently been passed which is designed to channel the settlement of disputes through the state Mediation Board. Unless this legislation can be adapted to permit greater scope to local agencies, this report indicates that these agencies may find their effectiveness considerably limited.

Federal-Municipal. In peace time, jurisdictional conflict between municipal agencies and agencies of the federal government has been rare. The former Conciliation Service did not intervene in disputes which could be settled at a local level. The provisions concerning mediation in the Labor Management Relations Act, 1947, are sufficiently flexible so that the relationship between local and federal agencies will probably not change much. In fact, the new federal agency is specifically directed to avoid attempting to mediate disputes which are not interstate by nature. (See Title II; Sections 201-205)

Factors in Toledo Success

If a municipal agency of some sort is desired, the next question may well relate to the kind of agency. Shall it imitate one of the agencies already established? No generalization is possible. Conditions in a particular locality must be carefully studied and a decision arrived at which will take into account the peculiarities of local customs and conditions. The decision to adopt any of the plans discussed earlier or any part of them, must give consideration to factors that made for success in other cities and the similarity or dissimilarity of conditions in the locality where such a plan is contemplated.

As indicated, the Toledo committee has frequently been cited as an example of a successful municipal mediation agency. What are some of the factors which have contributed to its apparent success?

Need. One significant factor was the need for the plan. This need arose from a history of long and bitter industrial warfare. Prior to the original Board, Toledo had acquired an industrial "black eye" which kept new industries from entering the area and interfered with the operation of those already there. Thus, the first

Board was based upon necessity and the second, the Labor-Management-Citizens Committee, upon the fear of a repetition of earlier conditions.

Charter Agreement. Secondly, labor, management, and public members were able to agree upon a basic charter which enumerated the principles upon which Committee action would be based. These earlier meetings were of the utmost importance in laying the ground-work for future activity.

Public Education. The public was subjected to an intensive "educational" campaign. From the beginning, Toledo's newspapers backed the project editorially. The second time such a plan was contemplated, the city had as a firm jumping-off place the successful operation of the original Board. Toledo management and labor were more easily able to work together and Toledo citizenry could view with favor where it might once have viewed with skepticism.

Leadership. Another factor important to the success of the plan was the willingness of the leaders in the community to participate actively. Both the first and second Toledo plans were able to obtain the services of the top-ranking men in management, labor and community life.

If a plan following the organizational set-up of the Toledo plan is desired, it is probable that similar conditions are essential to its success. But it certainly cannot be argued that to insure industrial peace an agency must model itself after the "Toledo Plan." New York and Boston bear witness. Where these agencies have succeeded, others, differing from that of Toledo, may likewise succeed.

Summary

In summary, there seems to be no single formula for settling industrial conflict through a municipal mediation agency. The most that can be said is that for any one city a number of solutions might prove to be adequate. The success of any plan will depend upon the amount of intelligent study given to the difficulties involved and to the demands of the particular situation. It will depend too upon the honesty, the sincerity, and the effort put into it by its originators, its administrators, and its participants.

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